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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/484,548	01/18/2000	Jules Gauthier	FMT1P025	9815
758	7590	11/01/2004	EXAMINER	
FENWICK & WEST LLP SILICON VALLEY CENTER 801 CALIFORNIA STREET MOUNTAIN VIEW, CA 94041			ISABELLA, DAVID J	
			ART UNIT	PAPER NUMBER
			3738	

DATE MAILED: 11/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s) .	
	09/484,548	GAUTHIER ET AL.	
	Examiner	Art Unit	
	DAVID J ISABELLA	3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 06 August 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 81,82,84,86,89-101,103,105-117 and 122-129 is/are pending in the application.
- 4a) Of the above claim(s) 112-117 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 81,82,84,86,89-101,103,105-111 and 122-129 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 81,82,84,86,89-101,103,105-111,122-129 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moss et al (5741249) in view of Cox, et al (6161543).

Moss, et al discloses an energy delivery device comprising a flexible ablation assembly including an ablation device. Cox et al discloses an energy delivery device comprising a flexible ablation assembly including an ablation device and means for directionally controlling the emitted energy. Though Cox et al. 1543 disclose a shield for directing ablative energy predominantly cryogenic, this reference suggests other forms of ablative energy such as ultrasonic, RF, laser, and the like, and also discloses an insulative sleeve 304 of flexible, low thermal conductivity material. Cox recognizes the need for selective focus of ablative energy and utilizes a sleeve with a window such that only a selected area of the ablation surface is exposed through the window. The sleeve may be slidable and rotatable so that the window is able to expose different areas of the ablating surfaces. In light of the teachings of Cox, et al, to provide the ablation device of Moss,et al with a sleeve with a window formed therein so that different, selected areas of the ablating surfaces may be exposed would have been obvious to one with ordinary skill in the art.

Claim 82, the energy is sufficient to ablate biological tissue (see column 6.).

Claim 84, see column 5, lines 1+.

Claim 86, see figure 6.

Claim 90-91, combination of Moss,et al as modified by Cox,etal would yield a device that would inherently perform the functionas claimed.

Claims 93-101 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moss, et al as modified by Cox et al as applied to claim 92 above, and further in view of Lenlhan et al (5683382) or Langberg (5246438)

Moss fails to disclose the range of energy used to ablate tissues. Lenlhan et al and Langberg teaches ranges of energy used in ablation of tissues including values in the range as claimed by applicant. If not inherent in Moss, et al, to use energy in the range as claimed by applicant would have been obvious from the teachings of Lenlhan et al or Langberg since each of Lenlhan et al and Langberg utilizes similar devices for a similar function.

Claims 103,105 do not distinguish over the ablation assembly of Moss, et al which includes a handle and a flexible ablation assembly.

Claims 106-110, see columns 4-6 of Moss, et al.

Claim111, see operation of the assembly of Moss,et al as modified by Cox et al.

Claims 122-123, see slidale sleeve of Cox et al.

Claim 124-129, the assembly of Moss,et al as modified comprises an elongate flexible body defining a contact surface along at least a length thereof and is configured

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to contact a surface tissue of the heart wherein the ablative element is disposed within the flexible body and is spaced from the contact surface to prevent the ablative element from contacting the tissue. The assembly includes a shield for selectively locating the tissue requiring ablation.

Double Patenting

Claims 93-101 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of U.S. Patent No. 6312427. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims are directed to a flexible ablation assembly including a flexible body portion with at least one ablation element disposed therein and means for directionally controlling the microwave ablation energy emitted therefrom which are clearly encompassed by the claims of patent 6312427.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J ISABELLA whose telephone number is 703-308-3060. The examiner can normally be reached on MONDAY-FRIDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CORRINE MCDERMOTT can be reached on 703-308-2111. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DAVID J ISABELLA
Primary Examiner
Art Unit 3738

DJI
October 26, 2004